

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Thus, claim 44 has been amended to delete the first formula under the definition of Q; and in response to the rejection of claims 44-63 under the first paragraph of 35 U.S.C. §112, claim 44 has also been amended to replace the proviso with a new proviso that omits specific prior art compounds.

Claims 45 and 50 have been amended as suggested by the Examiner in items 4 and 5 on page 3 of the Office Action. In view of these amendments, and the new proviso in claim 44, the claim objections in items 3-5 have been rendered moot.

Applicants respectfully submit that the foregoing amendments should be entered, even though they are being presented after a final rejection, since the effect of the amendments is to clearly overcome the rejections raised by the Examiner, as will be discussed below.

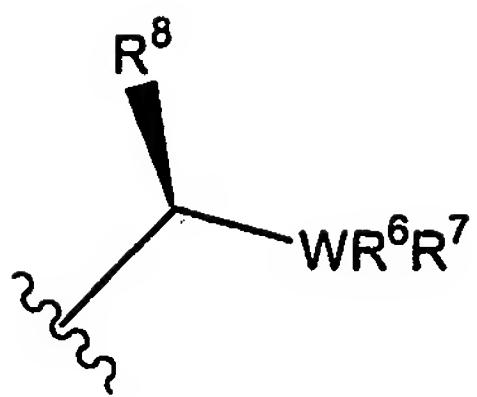
Thus, the rejection of claims 44-63 under the first paragraph of 35 U.S.C. §112 has been overcome by deleting the proviso language objected to by the Examiner. The new proviso language is more specific in listing prior art compounds which are excluded from the scope of claim 44, as will be discussed in detail below. In view of this, Applicants respectfully submit that the rejection of the claims under 35 U.S.C. §112 should be withdrawn.

The patentability of the presently claimed invention over the disclosure of the reference relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 44-54 under 35 U.S.C. §102(b) as being anticipated by Spindler et al. (US '844) is respectfully traversed.

The compounds excluded by the proviso in amended claim 44 set forth above are compounds of both the newly cited prior art (Spindler et al.) and the prior art previously relied upon by the Examiner in rejecting the claims, as will be discussed below.

a) The Spindler et al. reference is relevant for compounds of instant formulae (I), (IV) and (VII), if in instant claim 44 the radical Q is represented by the formula

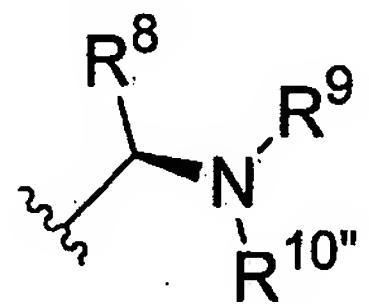


wherein W is a phosphorous atom.

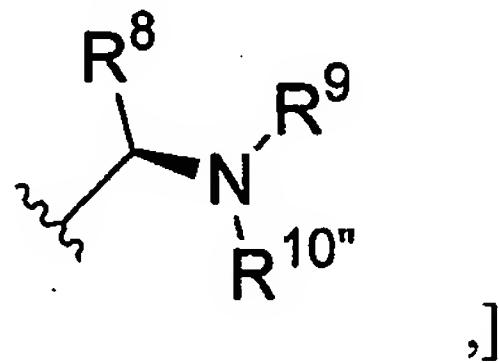
The same applies to the compounds 3i_{a,b} of Gambs et al. (see previous Office Action, item 16) and the compounds L13-15 from the Bieler reference (cited by Applicants).

It follows from cancelling this formula for Q that the amended claim 44 is patentable over these references.

b) The previous Office Action further cited compounds 19, 20 and 24 of Butler et al. (see previous Office Action, item 14), compounds 2 and 3 of Troitskaya et al. (see previous Office Action, item 15), and compounds 2i_{a,b} of Gambs et al. (see previous Office Action, item 16). These compounds are relevant for compounds of instant formulae (I), (IV) and (VII), if in instant claim 44 the radical Q is represented by the formula



The compounds in question have been excluded by introducing the following proviso clause into amended claim 44, however without the notes in square brackets:
 "with the proviso that [if W is P, n is 0, m is 0, and Q represents



the following compounds are excluded:

[in view of Troitskaya:] Fe(C₅H₅)(C₅H₃(CH₂NMe₂)(P Ph Me)),
 [in view of Butler:] Fe(C₅H₅)(C₅H₃(CHMeNMe₂)(P Ph Me));
 [in view of Butler:] Fe(C₅H₅)(C₅H₃(CHMeNMe₂)(P Ph n-Bu));
 [in view of Butler:] Fe(C₅H₅)(C₅H₃(CHMeNMe₂)(p Ph t-Bu));
 [in view of Gambs:] Fe(C₅H₅)(C₅H₃(CHMeNMe₂)(P n-Bu t-Bu));
 [in view of Gambs:] Fe(C₅H₅)(C₅H₃(CHMeNMe₂)(P Ph (3,5-bis(trifluoromethyl)phenyl)))."

The information in square brackets is for the Examiner as information about the whereabouts of the excluded compounds.

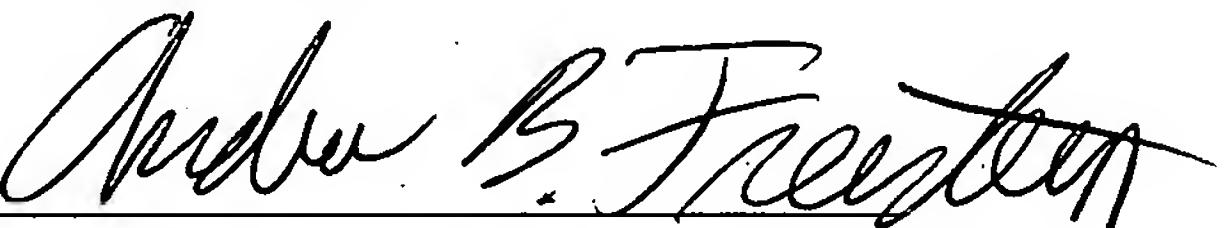
It follows from disclaiming these specific compounds that amended claim 44 is patentable over the applied references, with respect to the newly cited Spindler et al. reference, as well as the previously applied references.

The Examiner is maintaining the provisional rejection of claims 44-63 for obviousness-type double patenting as being unpatentable over the claims of Serial No. 10/586,204. The Examiner is again kindly requested to hold this rejection in abeyance, pending an indication that the claims of the present application are otherwise in condition for allowance.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of objection and rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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